UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

Bentley University,)
Employer,)
and) Case No. 01-CA-111570
BENTLEY UNIVERSITY PUBLIC)
SAFETY ASSOCIATION,)
Union.))

RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Respondent Bentley University submits the following exceptions to the recommended Decision and Order of Administrative Law Judge Joel P. Biblowitz:¹

EXCEPTIONS

- 1. Bentley University (the "University" or "Respondent") excepts to the ALJ's factual finding that in early August Officer Maria Canino sent Officer Kevin McDonnell a copy of emails between her and her supervisor, Sergeant Carmelo Echevarria, on the grounds that it is contrary to the record testimony. (JD 3:28-30; Tr. 52.)
- 2. The University excepts to the ALJ's finding that "[a]lthough that should have settled the matter, Echevarria sent an email on the following day stating that he was concerned 'at the way you were answering my questions' and wanted to follow up and to 'make sure that . .

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¹ Throughout these exceptions and the University's supporting brief, citations to the record shall be as follows: the ALJ's decision shall be "JD [Page]:[Line]"; the hearing transcript from the portion of the hearing shall be "Tr. [Page]"; the General Counsel's exhibits shall be "GCX[Number]"; and Respondent's exhibits shall be "RX [Number]."

. you also understand how to address a supervisor' . . ." on the grounds that there is no evidence to support the ALJ's finding that the discussion between Echevarria and Canino should have "settled the matter" and, further, that the ALJ misinterpreted Echevarria's email. (JD 4:37-38; GCX 2, p. 2.)

- 3. The University excepts to the ALJ's discounting the statement in Echevarria's email to Canino stating "that he was satisfied that they had addressed the issue" on the grounds that this statement is relevant to the University's position that it did not contemplate disciplining Canino and that Canino had no reason to believe that she would be subject to discipline. (JD 4:36-41; GCX 2, p. 2.)
- 4. The University excepts to the ALJ's finding that "Canino could reasonably have believed that this August 15 meeting might result in some form of discipline and therefore she was entitled to Union representation at the meeting" on the grounds that there is no objective evidence to support this conclusion. (JD 4:49-51.)
- 5. The University excepts to the ALJ's determination that "[i]f [Echevarria] wanted to have a meeting simply to address obvious issues, the appropriate manner of doing so would be for the two of them to meet again" on the grounds that there is no support for the Judge's conclusion that the only appropriate manner to address any outstanding issue was a meeting between Echevarria and Canino. (JD 5:3-4.)
- 6. The University excepts to the ALJ's determination that "[a]dding Williams and Flint to the meeting gave Canino reasonable cause to believe that it could result in discipline" on the grounds that the facts do not support this determination. (JD 5:4-6.)
- 7. The University excepts to the ALJ's determination that "[a]lthough Williams credibly testified that the August 15 meeting was just for clarification of the communication

issue, and that discipline was never considered, that is not dispositive . . . " on the grounds that the facts support a contrary determination. (JD 5:6-8.)

- 8. The University excepts to the ALJ's determination that "[b]y denying Canino active representation at the August 15 meeting, the Respondent violated Section 8(a)(1) of the Act" on the grounds that the facts do not support this determination. (JD 5:22-23.)
- 9. The University excepts to the ALJ's conclusion of law that "[b]y denying Maria Canino Union representation at an investigatory meeting conducted on August 15, at which time she could reasonably believe that discipline could result from the meeting, the Respondent violated Section 8(a)(1) of the Act" on the grounds that the facts and the law do not support this conclusion. (JD 5:33-35.)
- 10. The University excepts to the ALJ's failure to find, based on sufficient testimony in the record, that the August 15 meeting was neither investigatory nor disciplinary in nature and, thus, Canino was not entitled to Union representation during that meeting. (JD 5:33-35; Tr. 44-45, 58-59, 74, 77, 82.)
- 11. The University excepts to the ALJ's failure to consider the relevance of testimony that at the time of the August 15 meeting that the police officer's Union had only been in place for a little over a month. (Tr. 50-51.)
- 12. The University excepts to the ALJ's failure to assess responsibility of the Union's President, who did not raise the issue of whether the August 15 meeting could result in discipline, despite his understanding of *Weingarten* principles. (Tr. 62-63.)
- 13. The University excepts to the ALJ's failure to find that the issue in this case is de minimis and, thus, no remedy is warranted. (*See* Exception 10.)

14. The University excepts to the proposed remedy which is premised on erroneous finding that the University violated Section 8(a)(1) of the Act by refusing to allow Officer McDonnell to participate in a non-disciplinary meeting for the reasons set forth in the exceptions above. (JD 5:39-41.)

15. Respondent excepts to the recommended Order, including the Appendix, which are premised on an erroneous finding that the University violated Section 8(a)(1) of the Act. (JD 6, Appendix.)

RELIEF REQUESTED

For all the reasons set forth above and in its supporting brief filed herewith, Respondent Bentley University respectfully requests that the Board dismiss the Complaint in its entirety.

Respectfully submitted,

BENTLEY UNIVERSITY

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Dated: April 22, 2014

CERTIFICATE OF SERVICE

I certify that on April 22, 2014, I caused copies of the **Respondent's Exceptions To The Administrative Law Judge's Recommended Decision And Order** to be served upon the following by the NLRB's e-filing system:

National Labor Relations Board 1099 14th Street, N.W. Washington, DC 20570-0001

I hereby certify that on April 22, 2014, I emailed the foregoing **Respondent's**

Exceptions To The Administrative Law Judge's Recommended Decision And Order to the

following in accordance with Board Rules & Regulations Rule 102.114(i):

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